



## ASSOCIATION OF SALES & MARKETING COMPANIES

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### **SALES AGENCIES AND THEIR MANUFACTURER CLIENTS OPPOSE DELHAIZE PLAN**

Mark W. Baum, President and CEO of the Association of Sales & Marketing Companies (“ASMC”), indicated that since Delhaize America’s announcement of its “preferred broker” program, numerous manufacturers and their designated sales and marketing agencies have expressed grave concerns about the legality of its so called “preferred broker network” and its interference with supply chains services, costs and efficacy.

As noted previously, Delhaize appears to be attempting to reduce its cost of goods sold for its Food Lion and Hannaford Brothers stores and other banners by forcing their suppliers by January 1, 2012 to either deal directly with Delhaize and presumably pass on a discount in lieu of brokerage commission or requiring such manufacturers to use a list of preferred brokers, who in turn appear to have been requested to make or pass on an additional investment in Delhaize. Such demands, if made by Delhaize are not consistent with the Robinson-Patman Act, which prohibits discounts in lieu of commissions or the supplying of services or other consideration not proportionally equal to other similarly situated retailers. Moreover, Delhaize’s mandate tortiously interferes with the contracts between manufacturers and their chosen agencies and disrupts the markets and economies and efficacy of such manufacturers’ syndicated sales force.

Baum indicated that Delhaize appears to be attempting to gain an unfair marketplace advantage, which it is not entitled to, by using its economic might to force both the manufacturer or the so called “preferred broker network” to make a discriminatory discount to Delhaize that is not afforded to other food retailers in the highly competitive grocery industry. He also noted that recent economic studies have found that manufacturers utilizing their chosen sales and marketing agencies (SMAs) save on average 23% over comparable manufacturers’ direct sales forces.

In Delhaize’s “preferred broker plan”, sales and marketing agents were requested to make a more significant investment in Delhaize, with the promise that Delhaize would preclude certain brokers, from participating in the Delhaize program. Delhaize requested from participating SMAs a quid pro quo of increased investment in Delhaize in exchange for such promised increased business.

Baum stated that: *“if Delhaize’s mandated program were successful, it would have severe and inimical implications for the CPG and retail industry. However, such demands are clear Robinson Patman Act violations”*. The consequences would be enormous, if sales and marketing agencies could be selected by the retailers as opposed to the manufacturers, based on what concessions the retailer could extract, from buyers designation of its exclusive sales and marketing agencies.

The other so called “option” offered to manufacturers was that rather than use their chosen SMAs or being forced to select a Delhaize designated broker, they could deal directly with Delhaize, presumably at a lesser selling price, which could provide Delhaize a discount in lieu of commissions.

Baum indicated that certain sales and marketing agencies have indicated they intend to notify their state attorneys general to investigate Delhaize's unfair trade practices and discriminatory pricing. He reiterated that ASMC will always provide advocacy and defend sales and marketing agencies (SMA's) and their manufacture clients from illegal activities.